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Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820
PAUL R. PHILBROOK,
APPELLANT

v.

JEAN GLODGETT, ET AL.,
APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion and supplemental opinion and order of the United States District Court are reported at 368 F. Supp. 211 (1973). The Court's order of judgment, which is not reported, is set out in appellant Philbrook's Jurisdictional Statement (J.S.) at 41-43.

JURISDICTION

The judgment of the three-judge District Court was entered on February 21, 1974. A notice of appeal to this Court was filed on April 9, 1974. (J.S. at 45-46) The Jurisdictional Statement was filed on June 3, 1974, and probable jurisdiction was noted on October 29, 1974. The jurisdiction of this Court rests on 28 U.S.C. §1253.

QUESTION PRESENTED

Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(C)(ii)[1] and §2333.1(3) of the Vermont Welfare Assistance Manual exclude families from Aid to Needy Families with Children[2] benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of more advantageous ANFC benefits?

STATUTE AND REGULATION INVOLVED

42 U.S.C. §607(b)(2)(C)(ii) reads as follows:

> (b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title . . .
>
> (2) provides . . .
>
> (C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section . . .
>
> (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

Section 2333.1(3) of the Vermont Welfare Assistance Manual reads as follows:

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[1] Section 407(b)(2)(C)(ii) of the Social Security Act of 1935, as amended, 82 Stat. 273. Since the District Court used the United States Code citation, the appellant will use this citation throughout as well.

[2] Vermont has chosen to refer to its program under Title IV-A of the Social Security Act (42 U.S.C. §601 *et seq.*) as "Aid to Needy Families with Children" rather than "Aid to Families with Dependent Children" as it is referred to in the Act itself and elsewhere. The Vermont program shall be referred to hereinafter as "ANFC." When reference is to the Unemployed Father provisions, the program shall be referred to as "ANFC-UF".

> An "unemployed father" is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that . . .
>
> (3) He is not receiving Unemployment Compensation during the same *week* as assistance is granted. [emphasis in original text]

The full texts of 42 U.S.C. §607 and §2333.1 of the Manual are set out in appellant Philbrook's Jurisdictional Statement at 47-50 and 51-52, respectively.

STATEMENT OF THE CASE

1. Introduction

This case arises under Title IV-A of the Social Security Act of 1935, as amended, (42 U.S.C. §§601-610), which establishes the federal-state Aid to Families with Dependent Children (AFDC) program.[3] The Social Security Act provides for substantial federal payments to states for the funding of state assistance programs on behalf of families with a dependent child or children. In order to be eligible for federal payments, however, there must be a "state plan" under 42 U.S.C. §602(a) which meets all of the relevant requirements of the statute and its implementing regulations.

For purposes of the AFDC program, a "dependent child" is defined in 42 U.S.C. §606(a) to mean, in part, a needy child who is deprived of parental support or care because of the death, continued absence from the home, or physical or mental incapacity of a parent.[4]

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[3] See generally *King* v. *Smith*, 392 U.S. 309, 313, 316-17 (1968); *Rosado* v. *Wyman*, 397 U.S. 397, 407-09 (1970); *Shea* v. *Vialpando*, 94 S.Ct. 1746, 1750 (1974). See also M. Barth, G. Carcagno and J. Palmer, *Toward an Effective Income Support System: Problems, Prospects, and Choices* 15-19 (1974).

[4] 42 U.S.C. §606(a) reads as follows:

> The term "dependent child" means a needy child (1) who has been

In addition, states are given the option under 42 U.S.C. §607(a)[5] to expand the definition of "dependent child" to include a needy child who has been deprived of parental support because of his father's unemployment.[6] If a state plan provides for payments to families whose child is dependent because of the father's unemployment, the state must, among other things, meet the requirements of 42 U.S.C. §607(b)(2)(C)(ii).

That section requires that a state plan provide for the denial of assistance to such families with respect to any week for which the child's father receives unemployment compensation under a state or federal unemployment compensation law. This provision is implemented by a regulation promul-

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deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . .

[5] 42 U.S.C. §607(a) reads as follows:

The term "dependent child" shall, notwithstanding section 606 (a) of this title, include a needy child who meets the requirements of section 606 (a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a)(1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

[6] As of April, 1974, the Unemployed Father provisions were in effect in 26 states. See *Public Assistance Statistics April 1974*, DHEW Publication No. (SRS) 75-03100, NCSS Report A-2 (4/74), Table 5.

gated by the United States Department of Health, Education and Welfare, set forth at 45 C.F.R. §233.100(a)(5)(ii).[7]

The State of Vermont participates in the Unemployed Father segment[8] of the AFDC program under an approved state plan. In order to comply with the above-mentioned requirements, the Vermont Department of Social Welfare has promulgated §2333.1(3) of the Welfare Assistance Manual, which parallels 42 U.S.C. §607(b)(2)(C)(ii) and provides for the denial of ANFC-UF benefits for any week during which the unemployed father receives unemployment compensation.

2. District Court Proceedings

Appellees (plaintiffs below) are members (parents and minor children) of three Vermont families. Two of the families were terminated from the receipt of ANFC-UF benefits once the father began to receive weekly unemployment compensation. The third family's application for

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[7] 45 C.F.R. §233.100 (a) (5) (ii) reads as follows:

(a) Requirements for State Plans. If a state wishes to provide AFDC for children of unemployed fathers, the state plan under Title IV — Part A of the Social Security Act must, except as specified in paragraph (b) of this section . . . (5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406 (a) (1) of the Act [42 U.S.C. §606 (a) (1)] with whom such child is living, . . . (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

[8] The Unemployed Father segment is significant, both in Vermont and nationwide. In April 1974, for example, 862 families in Vermont were participating. The average amount of payment per family was $334.33, or $71.26 per recipient. The total amount expended in Vermont for the month was $288,191. Nationwide, 99,911 families received benefits under the UF segment during April, 1974. The average payment per family was $287.55, or $63.09 per recipient. The total monthly expenditure was $28,729,652. *Public Assistance Statistics April 1974, supra.*

ANFC-UF was denied because the father, at the time of application, was receiving unemployment compensation. In each case the amount of weekly unemployment compensation was less than the amount the family had been receiving or would have received under ANFC-UF.*

Suit was brought on March 6, 1972, in United States District Court for the District of Vermont seeking declaratory and injunctive relief and damages. The action against the Vermont Commissioner of Social Welfare was brought pursuant to the provisions of 42 U.S.C. §1983. The suit challenged the constitutionality of 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual, alleging that the statute and regulation violated respectively the Due Process Clause of the Fifth Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment. The plaintiffs below alleged that the court had jurisdiction over the Commissioner under 28 U.S.C. §§ 1343(3) and (4) and 28 U.S.C. §1331, and over the federal defendant under 28 U.S.C. §1361 and 28 U.S.C. §1336. A three-judge Court was convened under 28 U.S.C. §§2281-2282.

At the oral argument held on March 5, 1973, plaintiffs raised for the first time a statutory claim. They suggested that the families could avoid disqualification under §607(b)(2)(C)(ii) and §2333.1(3) if the father refused to accept the unemployment compensation to which he was entitled. It was argued that the statutory and regulatory provisions exclude a family from eligibility only for those weeks in which the unemployed father actually receives

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	ANFC (Monthly)	Unemployment Compensation (Monthly)
Glodgett	$239	$ 60
Percy	410	172
Derosia	394	56

unemployment compensation. (Transcript of Oral Argument, March 5, 1973 at 42-44)

The three-judge Court determined that jurisdiction existed over both defendants under 28 U.S.C. §1343(3), but decided the case on the basis of the statutory claim, thereby avoiding a decision on the constitutional issues.

In its opinion of October 17, 1973, the Court found that actual receipt of and not eligibility for unemployment compensation was controlling for ANFC-UF eligibility. From this determination, the Court concluded that an individual otherwise eligible for both programs could take his choice.[10]

The final order, issued February 21, 1974, enjoined the Commissioner from denying ANFC-UF to any individual eligible for unemployment compensation in that it prohibited him from compelling any individual to avail himself of unemployment compensation benefits and required him to advise applicants of this option. Even though the case was not certified as a class action, the order bound the appellant with respect to all others similarly situated. (J.S. at 41-43)

Appellant's stay of execution of the judgment was granted on March 1, 1974. (Appendix at 103)

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[10] On January 8, 1974, the Court issued a supplemental opinion and order which, among other things, denied the appellant's motion for a new trial and appellees' motion for a rehearing with respect to the Court's denial of class action certification.

SUMMARY OF ARGUMENT

I

The District Court's option plan, whereby an unemployed father may reject the unemployment compensation to which he is entitled in order to receive more advantageous benefits under the AFDC-UF program, is contrary to the AFDC statutory scheme.

Under 42 U.S.C. §602(a)(7), the states must take into consideration "any other income and resources" of an applicant for AFDC benefits. This provision has long been understood to require consideration of any income and resources for which an applicant is qualified, as well as any actually in hand.

Thus, contrary to the District Court's conclusion, the actual receipt of unemployment compensation is not controlling for purposes of AFDC eligibility. Rather, because of the effect of §602(a)(7), if an unemployed father is qualified for such compensation, he is ineligible for AFDC benefits under 42 U.S.C. §607(b)(2)(C)(ii) whether he actually receives it or not.

II

The legislative history of 42 U.S.C. §607(b)(2)(C)(ii) fully supports the appellant's position that an applicant is ineligible for AFDC benefits if he is qualified to receive unemployment compensation. The Conference Committee report on the 1968 amendments to the Social Security Act demonstrates beyond peradventure that Congress intended the word "receives" in §607(b)(2)(C)(ii) to encompass the qualification for receipt of unemployment compensation as well as actual receipt.

Congress, at that time, was attempting to modify the AFDC program so as to reduce the welfare population, and

any other interpretation of §607(b)(2)(C)(ii) would be inconsistent with both the clear statements of the Committee and the overall legislative objective.

III

The District Court's option plan, which would encourage many unemployed fathers to forego their unemployment compensation in favor of AFDC benefits, is totally inconsistent with the purposes of the unemployment compensation program.

That program was designed by Congress to provide assistance as a matter of right to wage earners temporarily out of work so that they would not have to resort to welfare. The unemployment compensation program is an alternative to public assistance, and the benefits thereunder must be exhausted before public assistance will be made available.

Moreover, the District Court's plan would have the effect of benefitting, at the expense of the taxpayer, those employers who are required to contribute to the unemployment compensation trust fund. In those cases where an unemployed father opts for welfare, the unemployment compensation trust fund would remain intact. Yet, there is no suggestion that Congress intended such a result.

IV

Underlying the District Court's option plan seems to be the belief that the Social Security Act requires that all needy families receive benefits which are at least the equivalent of the state standard of need as established under the AFDC program. But, as this court has recognized on several occasions, there is no such requirement under the Act. The Act is not violated if a family receives less benefits from the father's unemployment compensation program than it would under the AFDC program.

ARGUMENT

I. The statutory scheme governing the AFDC program does not permit an unemployed father who is eligible to receive unemployment compensation to forego this entitlement in favor of more advantageous welfare benefits.

In construing 42 U.S.C. §607(b)(2)(C)(ii), the District Court found that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." 368 F. Supp. at 217. With this as a starting point, the court reasoned as follows:

> Since actual payment of unemployment compensation is the controlling factor, rather than eligibility for such payment, the statute affords the unemployed father an option. There is no compulsion that he accept unemployment compensation. He may accept such payment and forego ANFC-UF benefits for himself and his family, or he may accept the benefits afforded by the ANFC-UF program at the cost of surrendering unemployment compensation. The option is to receive (a) ANFC without unemployment compensation, or (b) unemployment compensation without ANFC. We construe this option to operate as follows: If a father otherwise eligible for ANFC-UF receives unemployment benefits which are less than the ANFC payment for which he qualifies, he can reject the unemployment check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need. If, on the other hand, he receives an unemployment check which is larger than his ANFC stipend would be, he can accept it, and thereby forego his right to ANFC for that week. In either event, the option available to him will provide total income equal to or greater than the state standard of need. *Id.* at 217-218.

This approach is totally improper, however, because it rests upon an erroneous premise. The disqualifying factor is not

actual payment; rather mere qualification for unemployment compensation[11] by itself precludes participation in the ANFC-UF program.

The District Court's error in construction[12] resulted, in part, from the fact that it failed to consider the inter-relationship between §607(b)(2)(C)(ii) and other relevant sections of Title IV-A of the Social Security Act, their implementing regulations, and administrative history. The Court's analysis was limited simply to the very language of §607(b)(2)(C)(ii) itself, and that language was interpreted literally. Clearly, however, individual sections of a single statute should be construed together, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, 332 U.S. 480, 488 (1947); *Erlenbaugh* v. *United States*, 409 U.S. 239, 244 (1972), especially when, as will be demonstrated below, a literal reading produces an unreasonable result clearly contrary to the intent of the legislation as a whole. See *Ozawa* v. *United States*, 260 U.S. 178, 194 (1922); *United States* v. *American Trucking Assns.*, 310 U.S. 534, 543, (1940); *United States* v. *Public Utilities Commission of California*, 345 U.S. 295,

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[11] Repeated use of the term "qualification for receipt" or similar terms is made throughout. It is intended that an unemployed father is qualified to receive unemployment compensation if he would have been eligible to receive it upon filing an appropriate application.

[12] The Court incorrectly states that the "defendants concur" in its construction. 368 F.Supp. at 217. Defendant Philbrook, the appellant here, submitted a memorandum to the District Court in which he specifically opposed this construction of the statute (Defendant Philbrook's Memorandum of Law, April 10, 1973). It is true though, that in a memorandum submitted to the District Court by Defendant Weinberger, he initially took the position that the Court adopted. (Federal Defendant's Memorandum of Law, August 16, 1972, p. 7, n. 2). This was at a time when the construction of the statute was not in issue, however, and his position has since been clarified (Federal Defendant's Memorandum of Law, March 27, 1973, p. 6).

315 (1953); *Perry* v. *Commerce Loan Co.*, 383 U.S. 392, 400 (1965); *Malat* v. *Riddell*, 383 U.S. 569, 571-72 (1966).

By reading §607(b)(2)(C)(ii) in conjunction with 42 U.S.C. §602(a)(7)[13] the intended scope of the former becomes clear; it becomes evident that the word "receives" is intended to include both actual receipt and qualification for receipt.

Section 602(a)(7), a provision applicable to the entire AFDC program, reads as follows:

> A State plan for aid and services to needy families with children must . . . (7) except as may be otherwise provided in clause (8), provide that *the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children*, or of any other individual (living in the same house as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income. (emphasis added)

In 1968,[14] the year Congress first required states which

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[13] Section 402(a)(7) of the Social Security Act of 1935, as amended, 53 Stat. 1379.

[14] Prior to 1961, the definition of "dependent child" did not include a child who was dependent because of parental unemployment. In 1961, Congress expanded the definition temporarily (effective May 1, 1961 to June 30, 1962) to include ". . . a needy child under the age of eighteen who has been deprived of parental support or care by reason of the unemployment (as defined by the State) of a parent . . .". The amendment to the Act also gave the States the option to "provide for the denial of all (or any part) of the aid under the plan to which any child or relative might otherwise be entitled for any month, if the unemployed parent of such child receives unemployment compensation under an unemployment compensation law of a State or of the United States for any week any part of which is included in such month." Act of May 8, 1961, Pub. L. 87-31, §1, 75 Stat. 75.

participated in the Unemployed Father program to deny all AFDC benefits to families in which the father receives unemployment compensation, the mandate of §602(a)(7) was implemented in the rules[15] promulgated by the U.S. Department of Health, Education, and Welfare (HEW) in its *Handbook of Public Assistance Administration ("Handbook")*. These rules obviously reflected the agency's interpretation of §602(a)(7). This being the case, it must be presumed that Congress was aware of, and accepted, this interpretation when it passed §607 (b) (2) (C) (ii). *Cf. Commissioner of Internal Revenue* v. *Noel's Estate*, 380 U.S. 678, 682 (1965).

With respect to developing potential income and resources for recipients under Titles I, IV, X, XIV, and XVI of the Social Security Act, the *Handbook* provided as follows:

These provisions were extended for five years in 1962. Act of July 25, 1962, Pub. L. 87-543, Title I, §131(a), 76 Stat. 193.

In 1967, Congress extended the termination date from June 30, 1967 to June 30, 1968. Act of June 29, 1967, Pub. L. 90-36, §2, 81 Stat. 94.

In 1968, the provisions were amended twice. The first change, among other things, eliminated the authority for states to apply their own definition of unemployment and gave that authority to the Secretary; limited the applicability of the expanded definition of dependent child to those deprived of parental support or care by reason of the *father's* unemployment; required in a new section 407(b)(2)(C)(ii) (42 U.S.C. §607(b)(2)(C)(ii)) the denial of assistance . . . "if, and for as long as, such child's father . . . receives unemployment compensation under an unemployment compensation law of a State or of the United States;" made the Unemployed Fathers program permanent. Act of January 2, 1968, Pub. L. 90-248, Title II, §203(a), 81 Stat. 882.

The second change in 1968 amended §407(b)(2)(C)(ii) to read as it does at present. Act of June 28, 1968, Pub. L. 90-364, Title III, §302, 82 Stat. 273.

[15] These rules have been viewed as authoritative in several cases, including *Shea* v. *Vialpando*, *supra*; *Lewis* v. *Martin*, 397 U.S. 552 (1970); and *King* v. *Smith*, *supra*.

> The State has the responsibility for establishing policies with reference to potential sources of income that can be developed to a state of availability. *Handbook*, Part IV, §3120.

In explaining this policy, the *Handbook* dealt with the question of whether, under the above-mentioned Titles, the wife of a beneficiary under Old Age, Survivors and Disability Insurance (OASDI) benefits, or a woman with a wage record, must apply for reduced OASDI benefits if she were between age 62 and 65 or whether she could wait until age 65 and receive full benefits. The *Handbook* stated that the woman had an option, but went on to say:

> The Federal Act, however, does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application. *Handbook*, Part IV, §3140(4).

The *Handbook* also outlined the appropriate treatment of "Other Statutory Benefits." It stated:

> In addition to OASDI, other statutory benefits to which applicants and recipients for public assistance may qualify include *unemployment insurance*, temporary disability insurance, railroad retirement benefits, civil service retirement benefits, other government retirement benefits (Federal, State, county and local) and veterans benefits. *It is important that the State's policies and procedures for determining eligibility on the basis of need include clear instructions to staff for identifying cases in which such statutory benefits might be a resource, and, with respect to such cases, the process of determining the availability of such resources. Handbook*, Part IV, §3140(6). (emphasis added)

With this administrative interpretation in mind, it is reasonable to conclude that Congress meant the word "receives" in §607(b)(2)(C)(ii) to carry forward the existing policy

which required an AFDC applicant to avail himself of any income or resource that he could obtain upon application.

These *Handbook* provisions have now been superseded by HEW regulations which impose the same requirements. And since HEW is the federal agency charged with the administration of the Social Security Act, deference must be given to its interpretations. *Lewis* v. *Martin*, *supra* at 559. These regulations require that "... only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered ..." 45 C.F.R. §233.20(a)(3)(ii)(c), and that the state plan must "[P]rovide that the agency will establish and carry out policies with reference to applicants' and recipients' *potential sources of income that can be developed to a state of availability.*" 45 C.F.R. §233.20(a)(3)(ix). (emphasis added)

In Vermont, the long-standing policy is implemented in §2270 of the Welfare Assistance Manual which states:

> All *potential* sources of income and/or resources to meet current or future needs of applicants(s)/recipient(s) shall be explored, identified, and if feasible, developed. The applicant/recipient shall be encouraged to take the initiative, when able, to secure such income and/or resources for himself, with the assistance, if needed, of department staff. Practical and feasible steps in identifying and developing potential income and/or resources include, but are not limited to the following ...
> 2. *Filing applications for benefits to which the individual may be entitled.* (emphasis added)

Thus, qualification for unemployment compensation has long been considered to fall within the category of "any other income and resources" under §602(a)(7), and this Court has seemingly adopted such an interpretation.

In the recent case of *Shea* v. *Vialpando*, *supra*, this Court had occasion to interpret the last clause of §602(a)(7),

which requires the States to take into consideration "any" expenses incurred in earning income. Mr. Justice Powell said:

> By its terms, [§602(a)(7)] requires the consideration of "any" reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term "any," we read this language as a congressional directive that *no limitation*, apart from that of reasonableness, may be placed upon earning of income. 935 ct. at 1973. (emphasis added)

The word "any" also modifies "other income and resources," which is the clause of §602(a)(7) relied upon here. By applying the same meaning of the word "any" in this context, there should be "no limitation" on the income and resources that must be taken into consideration. "Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account, and this individualized approach has been reflected in the implementing regulations." *Id.* at 1954. (emphasis in original)

It should be pointed out that the effect of §607(b)(2)(C)(ii) when read in conjunction with §602(a)(7) is to work a complete disqualification for AFDC benefits. Since §602(a)(7) compels an individual to explore and take advantage of all potential resources, by doing so with respect to unemployment compensation that individual would be prohibited from receiving AFDC under §607(b)(2)(C)(ii). Thus, the availability of unemployment compensation occasions a significantly different result from the availability of other income or resources under §602(a)(7). That there may be different treatment, however, is recognized in 45 C.F.R. §233.20(a)(1) which states that a state plan for AFDC must provide that all types of income will be treated the same "except where otherwise specifically authorized by

Federal statute." (The rationale for treating unemployment compensation differently is discussed below in III.)

Despite all the above, the appellees take the position that the word "receives" does not encompass eligibility for receipt. As support for this position, they refer to the fact §607(b)(1)(C)(i) uses the words "qualified . . . for unemployment compensation," and that since these words are used in one subsection of §607(b), their absence in §607(b)(2)(C)(ii) means that the word "receives" is limited to actual receipt. As stated in appellees' Motion to Affirm at 7, the omission of these words in §607(b)(2)(C)(ii) indicates "that Congress was capable of making a distinction between 'receipt' of unemployment compensation and 'eligibility' for benefits . . ."

Section §607(b)(1)(C)(i), in setting forth as eligibility standards the necessary degree of prior attachment to the labor force, provides that:

> (b) The provisions of subsection (a) of this section [the expanded definition of "dependent child"] shall be applicable to a State if the State's plan approved under section 602 of this title —
>
> (1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when —
>
> * * *
>
> (C)(i) such father has 6 or more quarters of work (as defined in subsection (d)(1) of this section) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3) of this Section) for unemployment compensation under the unemployment compensation law of the

> State, within one year prior to the application for such aid; . . .

The distinction is not significant for present purposes, however, because §607(b)(1)(C)(i) and §607(b)(2)(C)(ii) deal with completely different concepts. In the former, Congress was concerned only with limiting AFDC-UF payments to those individuals who had a prior attachment to the labor force. This prior attachment could be described in part by direct reference to eligibility for unemployment compensation.

On the other hand, §607(b)(2)(C)(ii) deals with the question of receipt of AFDC and unemployment compensation in the same eligibility period. In this respect, there is no reason to examine the prior work history of the applicant and hence no need in this section to speak in terms of qualification to receive unemployment compensation, as distinguished from actual receipt, especially in view of the section's traditional interpretation.

II. The District Court's interpretation is contradictory to relevant legislative history.

Just as it is necessary to view §607(b)(2)(C)(ii) as part of an integral scheme, it is likewise necessary to "undertake the Herculean task of seeking to ascertain Congressional intent through legislative history. This is especially difficult in the welfare area." *Parks* v. *Harden*, 354 F. Supp. 620, 674 (N. D. Ga. 1973). While the instant case is no exception, the existing legislative history supports the appellant's position.

The most important excerpt from the legislative history can be found in the Conference Committee's report of the January, 1968, amendments to the Social Security Act. In the House version of those amendments (the version which was ultimately enacted), states were required to deny

assistance "if, and for so long as [the unemployed father] . . . receives unemployment compensation under an unemployment compensation law of a state or of the United States." The amendment passed by the Senate, however, retained the option provision then in effect, which permitted states to deny any or all AFDC benefits if unemployment compensation were received.[16] The Conference Committee's report explained both versions as follows:

> "Unemployed Fathers under AFDC"
> Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to *exclude* fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid, *and fathers who receive (or are qualified to receive) any unemployment compensation under state law.* [emphasis added]
> The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill). The Senate recedes (except on the conforming amendments and effective date provisions). H. R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967) [emphasis added].

Thus, it is apparent that the Conference Committee understood the House version to "exclude" from AFDC eligibility those fathers who "receive" unemployment compensation as well as those who are "qualified to receive" unem-

[16] See n. 14, *supra* at 10.

ployment compensation. In addition, the fact that the words "or are qualified to receive" are enclosed within parentheses suggests that the Conference Committee realized that the word "receives" included both the actual receipt and the qualification for such receipt.

That this is the correct interpretation becomes even clearer when viewed in terms of what Congress was endeavoring to accomplish through enacting the 1968 amendments to the AFDC program. The report of the House Committee on Ways and Means[17] discussed the problem and the proposed solutions as follows:

> AID TO FAMILIES WITH DEPENDENT CHILDREN
>
> * * *
>
> Third, the bill would make reforms in the aid to families with dependent children programs:
>
> (1) To give greater emphasis in getting appropriate members of families drawing aid to families with dependent children (AFDC) payments into employment *and thus no longer dependent on the Welfare rolls*, the bill would require the States.
>
> * * *
>
> (d) To modify the optional unemployed parents program to provide uniform eligibility requirements throughout the United States. (emphasis added).

The report, at 96-97, continued as follows:

> Your committee has studied these problems very carefully and is now recommending several coordinated steps which it expects, over time, will reverse the trend toward higher and higher Federal financial commitments in the AFDC program. The overall plan which the committee has developed, with the advice and help of the Department of Health, Education, and Welfare, amounts to a new direction for AFDC legislation. The committee is recommending the enactment of a series of

[17] H. R. Rep. No. 544, 90th Cong. 1st Sess. 2 (1967).

amendments to carry out its *firm intent of reducing the AFDC rolls* by restoring more families to employment and self-reliance, thus reducing the Federal financial involvement in the program. These changes are —

* * *

(6) A more definitive program of aid to the children of the unemployed. (emphasis added)

It is quite evident from the above that Congress was vitally concerned with reducing the number of welfare recipients. While the above-quoted excerpts from the Committee Report do not refer specifically to the proposed §607(b)(2)(C)(ii), that section was one component of the overall plan to accomplish the objective. With this in mind, it would be strange indeed to say that Congress at the very same time and through the effect of the very same provision intended to permit unemployed fathers to reject their entitlement and join the welfare rolls.

The only case interpreting the requirements of §607(b)(2)(C)(ii) of which the appellant is aware is *Burr* v. *Smith*, 322 F. Supp. 980 (W. D. Wash. 1971), *aff'd. mem.* 404 U.S. 1027 (1972), and the interpretation is fully consistent with the above-described legislative history. The Court in that case rejected a constitutional challenge to a state statute and regulation which denied AFDC benefits to families in which the father was eligible for unemployment compensation.

In its effect, the regulation was identical to Vermont's: "Under the regulation's terms, children otherwise eligible for AFDC-[UF] assistance are disqualified from receiving benefits during any week in which the fathers receive or are eligible to receive unemployment compensation" *Id.* at 983-984.

The court left no doubt that it understood the regulation to be consistent with the mandate of §607(b)(2)(C)(ii): "Except for this eligibility, plaintiffs would have been en-

titled to receive joint federal-state Aid to Families with Dependent Children (AFDC) benefits designed to assist the families of persons temporarily unemployed (AFDC-[UF]). 42 U.S.C. §607." *Id.* at 981. The court also stated that the regulation "was promulgated in direct response to the federal provision." *Id.* at 983. And at 984: "The purpose of the regulation is to protect the State's eligibility to participate in the federal matching grant program for unemployed fathers. Without the regulation, the State's AFDC-[UF] plan would not meet federal requirements. 42 U.S.C. §607(b); 45 C.F.R. §233.100."

III. The District Court's interpretation evades the intended Congressional purpose of the unemployment compensation program that it be the initial resource for the unemployed and that its benefits be exhausted before an unemployed person can obtain public assistance.

As indicated, the court has fashioned a scheme under which an unemployed father will be encouraged in many cases to enlist his family on the welfare rolls rather than receive unemployment compensation. Yet, this result is entirely contradictory to the clearly stated purpose of the unemployment compensation program. As explained below, that program was expressly designed to keep families off welfare.

The federal statute creating the unemployment compensation program was passed as part of the Social Security Act of 1935, the same Act that created the predecessor of the AFDC program. The country was then suffering from an economic depression, and Congress was attempting to mold new programs to overcome the severe problems.

Unemployment compensation and aid to dependent children represented two separate and distinct approaches, each designed to benefit a different segment of the population

then suffering from economic insecurity. The former was a significant departure from previous ways of dealing with such insecurity; it was based on the principle of insurance, and created a right to compensation during periods of unemployment. The latter was conceived as a program of last resort, one intended to benefit a category of individuals (children) not otherwise protected.

The most thorough discussion by this Court of the purposes of the unemployment compensation program is found in *California Department of Human Resources Development* v. *Java*, 402 U.S. 121 (1971).[18] In that case, the Chief Justice dealt at length with the intended scope of the program as reflected in its legislative history.

He stated at 130-131:

> The Social Security Act received its impetus from the Report of the Committee on Economic Security, which was established by executive order of President Franklin D. Roosevelt to study the whole problem of financial insecurity due to unemployment, old age, disability, and health. In its report, transmitted to Congress by the President on January 17, 1935, the Committee recommended a program of unemployment insurance compensation as a "first line of defense for * * * [a worker] ordinarily steadily employed * * * for a limited period during which there is expectation that he will soon be reemployed. This should be a *contractual right* not dependent on any means test. * * * It will carry workers over most, if not all, periods of unemployment in normal times *without resort to*

[18] Such purposes have also been discussed in several lower court decisions, including *Crow* v. *California Department of Human Resources Development*, 490 F.2d 580, 586 (Duniway, J. concurring and dissenting) (9th Cir. 1973); *Von Stauffenberg* v. *District Unemployment Compensation Board*, 459 F.2d 1128, 1131 (D. C. Cir. 1972); and *District Unemployment Compensation Board* v. *Wm. Hahn & Co.*, 399 F.2d 987, 990 (D. C. Cir. 1968).

> *any other form of assistance.*" (footnotes omitted) (emphasis added)

And at 133:

> The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers "to tide themselves over, until they get back to their old work or find other employment, *without having to resort to relief.*" Unemployment benefits provide cash to a newly unemployed worker "at a time when otherwise he would have nothing to spend," serving to maintain the recipient at subsistence levels *without the necessity of his turning to welfare or private charity.* Further, providing for "security during the period following unemployment" was thought to be a means of assisting a worker to find substantially equivalent employment. (footnotes omitted) (emphasis added)

Continuing at 131-132:

> Paying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of *avoiding resort to welfare* and stabilizing consumer demands. . . . (emphasis added)

Thus, unemployment compensation and welfare were considered mutually exclusive. The whole import of the former was to meet the needs of the unemployed during temporary periods when jobs were unavailable so that workers would not have to turn to welfare to support themselves and their families. Since by definition the recipient of unemployment compensation would have a prior attachment to the labor market, it was presumed that he would be able to resume work before his compensation was exhausted. If work was not forthcoming, and the recipient exhausted his compensation benefits and all other available resources, then, but only then, could he turn to other means of assistance.

Such compensation is not a complete safeguard

against the hazard of unemployment. In periods of prolonged depression many workmen will exhaust their compensation benefits before they find other employment. This will hold true of some workmen even in periods of prosperity. Supplemental to unemployment compensation there will still be need for work relief for those whose compensation rights have been exhausted, as well as for workers who are outside of the compensation system. S. Rep. No. 628, 74th Cong. 1st Sess. 11 (1935)

The concept of unemployment compensation as a right

> . . . represented a radical departure from traditional methods of dealing with economic insecurity. The social insurance principle which the act embodied was new to the American public and to American law. Traditional community response to the needs of the employed had taken the form of charity — public and private. The Depression had made it clear to most people that this response was seriously deficient in two respects. Economically, the community lacked the fiscal organization and resources to meet the exigencies of mass unemployment on a charitable basis; and relief failed to stabilize consumer demand in the crucial incipient stages of a depression. Ethically — in terms of the community values involved — both the techniques of giving charity, particularly the "means" or "needs" test, and the psychological impact of receiving "charity," undermined the self-respect and independence of the unemployed. It was these economic and ethical deficiencies to which the unemployment compensation provisions of the act responded.
>
> The ethical aspect of this new community response lay in the social insurance principle that payments be made to an eligible claimant as a matter of right. Supporters and opponents of the Social Security Act were agreed that in this principle was the essential difference between unemployment compensation and charity. Understanding the phrase "payments as a matter of right" is

> important because it represents almost the entirety of the legislative history from which one can reconstruct how Congress hoped its fundamental objectives of supporting the dignity and independence of the unemployed would be realized. It appeared ubiquitously in legislative debates and political literature.[19] (footnotes omitted)

Clearly then, unemployment compensation was originally, and still is, intended to be separate from public assistance.

This fact is also supported in the legislative history of the AFDC program. The Aid to Dependent Children program, as it was originally called, was also created in the Social Security Act of 1935. The report of the Senate Committee on Finance, in discussing the aid to children provisions of H. R. 7260, the bill that was enacted, stated as follows:

> The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures of the security of children. *Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers*; and even old-age pensions and old age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.
>
> *In addition, however, there is great need for special safeguards for many underprivileged children* . . . S. Rep. No. 628, *supra* at 16. (emphasis added)

From this language it is apparent that the Aid to Dependent Children program was not intended to assist the same category of children that would be benefited by unemployment compensation. The Aid to Dependent Children program was meant to cover children who were not members of families in which the father was eligible for unemployment compensation.

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[19] Note, *Charity versus Social Insurance in Unemployment Compensation Laws*, 73 Yale L. J. 357, 358-360 (1963).

If the Court's interpretation of the statute and regulation is followed, however, an obvious result would be to shift drastically the burden of supporting families of unemployed fathers from the unemployment compensation program to the AFDC program in those cases where the father is eligible for both and the welfare benefits prove to be more advantageous.[20] The total onus would be forced upon the already strained welfare budgets, while accumulated unemployment compensation funds remain intact.

As a related consequence, those former employers of unemployed fathers who are required by law to contribute to the unemployment compensation trust fund would be unjustly benefitted. Since such fathers would be permitted to forego completely the unemployment compensation to which they are entitled, these employers would benefit over time through reduced rates of contribution.[21] It is highly doubtful that Congress intended such a potential gain to employers at the expense of the taxpayer.[22]

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[20] In addition to weighing the monetary consideration, the individual would have to consider Medicaid and Food Stamp benefits which would be automatically available to members of his family as ANFC recipients.

[21] In Vermont, those employers who are required to contribute do so according to a rate schedule which is determined by the amount paid in to the trust fund versus the amount paid out in benefits. Basically the less paid out, the lower the rate. (Vermont's unemployment compensation program is established under the provisions of 21 V.S.A. §1301, *et seq.* Rates of employer contributions are established under 21 V.S.A. §§1324-1327.)

[22] In an affidavit filed in the District Court, (Appendix at 101), appellant Philbrook estimated, on the basis of statistics contained in an affidavit submitted by an employee of the Vermont Department of Employment Security, (Appendix at 94), that the cost to Vermont in additional ANFC benefits could be as high as $1 million in fiscal year 1975. Additionally, the federal share in Vermont could increase by approximately $2 million.

IV. The Social Security Act does not require that all needy families receive equal benefits according to the state standard of need.

The obvious difficulty presented by the factual situations in the case at bar is that the amounts of available unemployment compensation are less than the monetary standards applicable to the ANFC-UF program. Each family involved in this litigation would have received more on welfare than through unemployment compensation.[23]

The Court in the instant case has stated, at least implicitly, that economic hardship is a crucial factor, and that all needy families should receive at least the state's standard of need as established under the ANFC program. In explaining its option plan, the District Court said: "In either event, the option available to him will provide total income equal to or greater than the state standard of need" 368 F. Supp. at 218. But, as this Court has recognized in several of its decisions, there is no such requirement.

In *Dandridge* v. *Williams*, 397 U.S. 471 (1970), this Court upheld Maryland's maximum grant limitation which imposed an upper limit in AFDC benefits of $250 per month. Had this limitation not been imposed, large families would have received considerably more money since their state-computed standard of need substantially exceeded the maximum grant. Despite this fact, it was held that such maximums were not prohibited by the Social Security Act. While *Dandridge* dealt only with the question of relative economic hardships within the AFDC program, the reasoning is equally applicable to the instant case which deals with the amount of benefits available under the unemployment compensation program in relation to the ANFC standard.

In *Jefferson* v. *Hackney*, 406 U.S. 535 (1972), this Court upheld the percentage reduction system in effect in Texas.

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[23] See n. 9, *supra* at 6.

Pursuant to that system, Texas had funded its AFDC program at only 75% of the standard of need, while its other Social Security Act programs were funded at 95% and 100%. Mr. Justice Rehnquist stated at 549-559:

> Similarly, we cannot accept the argument in Mr. Justice MARSHALL's dissent that the Social Security Act itself requires equal percentages for each categorical assistance program. The dissent concedes that a State might simply refuse to participate in the AFDC program, while continuing to receive federal money for the other categorical program . . . Nevertheless, it is argued that Congress intended to prohibit any middle ground — once the State does participate in a program it must do so on the same basis as it participates in every other program. Such an all-or-nothing policy judgment may well be defensible, and the dissenters may be correct that nothing in the statute expressly rejects it. ***But neither does anything in the statute approve or require it.*** (footnote omitted) (emphasis added)

In *Macias* v. *Finch*, 324 F. Supp. 1252 (N.D. Cal. 1970), *aff'd. sub nom. Macias* v. *Richardson*, 400 U.S. 913 (1970), plaintiffs challenged a federal regulation which defined an unemployed father under the AFDC program in terms of the number of hours worked. It was claimed, among other things, that the regulation was inconsistent with the federal statute (42 U.S.C. §607) which authorized the Secretary to establish standards for determining "unemployment." The plaintiffs claimed that a definition based on the number of hours worked was not permissible under the statute, and that a family's need must be taken into account. By disregarding need, the effect of the regulation was to deny AFDC eligibility to some families in which the father was working more hours than allowed, even though he was earning less than the state standard of need. The court rejected the challenge and

found that the regulation complied with Congressional intent and was within the scope of the statute.

In *Burr* v. *Smith, supra*, the District Court was faced with nearly an identical factual situation to the one at bar: AFDC benefits were denied solely by virtue of the unemployed father's eligibility for unemployment compensation. This resulted in economic hardship to the plaintiffs since their compensation benefits were less than the state standard of need. Despite this fact, the Court upheld the state regulation. The decision was based on an equal protection rationale, but clearly the Court would not have had to reach that issue if the Social Security Act required an equalization of benefits.

Therefore, if the Court's option plan in the instant case is premised on a presumed Congressional intent to equalize benefits among families in need, the plan must fail.

It should be noted at this point that, although the families involved in this case would have received more money from the ANFC-UF program, this is not necessarily typical.

The average monthly ANFC-UF payment in Vermont as of February, 1974[24] was $327.00.[25] The average weekly unemployment compensation payment as of January, 1974 was $74,[26] or $318.20 monthly,[27] for a male with two or more dependents.[28]

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[24] The average payment for April, 1974 was $334.33. See n. 8, *supra* at 5.

[25] See Affidavit of Paul R. Philbrook (Appendix at 101)

[26] See Affidavit of Robert Saliba (Appendix at 94)

[27] To convert from the weekly amount to the monthly amount the weekly payment was multiplied by 4.3.

[28] The statistical analysis was based on a computer run which identified data relating to males with two or more dependents. Females, and males with no dependents or one dependent, were not considered in the analysis because it was assumed that they would not be eligible for the UF program. If a male had one dependent, it was assumed that that dependent was a wife.

Until July, 1974, the maximum weekly benefit was $77,[29] or $331.10 monthly. Thus, the average unemployment compensation payment for males with two or more dependents was very close to the maximum benefit available. Assuming the same is true nationwide, it appears that males in this category can expect to receive at least as much, if not more, from unemployment compensation than from the AFDC-UF program. As indicated by the chart[30] below, the maximum unemployment compensation payment is higher than the average AFDC-UF payment in all of the jurisdictions for which statistics are available. In fact, in six of these jurisdictions, the average unemployment compensation payment is in excess of the average AFDC-UF payment.

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[29] The maximum weekly benefit was raised in July, 1974 to $86 weekly, or $369.80 monthly.

[30] **COMPARISON OF AVERAGE AND MAXIMUM MONTHLY UNEMPLOYMENT COMPENSATION PAYMENTS WITH AVERAGE AFDC-UF MONTHLY PAYMENTS, BY JURISDICTION**

Jurisdiction	AFDC-UF Payment per Family[a] (Average Monthly)	Monthly Unemployment Compensation Payment Average[b]	Maximum[c]
1. California	$259.94	$254.56	$387.00
2. Colorado	259.85	288.44	421.40
3. Delaware	157.22	241.79	365.50
4. Dist. of Columbia	207.99	335.70	503.10
5. Guam	N/A	N/A	N/A
6. Hawaii	365.78	292.62	421.40
7. Illinois	328.37	258.60	451.50
8. Iowa	339.77	256.84	344.00
9. Kansas	251.92	234.95	339.70
10. Maryland	215.63	260.58	382.70
11. Massachusetts	305.65	277.14	580.50
12. Michigan	348.82	255.38	455.80
13. Minnesota	346.30	239.38	365.50

14. Missouri	N/A	N/A	N/A
15. Nebraska	N/A	N/A	N/A
16. New York	390.44	260.84	408.50
17. Ohio	214.96	249.83	490.20
18. Oklahoma	243.20	191.09	335.40
19. Oregon	257.88	216.03	326.80
20. Pennsylvania	260.31	297.99	447.20
21. Rhode Island	286.61	266.73	460.10
22. Utah	303.00	249.92	399.90
23. Vermont	334.33	262.30	369.80
24. Washington	288.99	264.32	369.80
25. West Virginia	210.83	193.50	460.10
26. Wisconsin	380.99	285.56	425.70

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[a] *Public Assistance Statistics April, 1974, supra*, Table 5.

[b] Preliminary date of the U. S. Department of Labor as compiled by Division of Research and Statistics, Ohio Bureau of Employment Services, 6-25-74.

[c] *Comparison of State Unemployment Insurance Laws*, U. S. Department of Labor, Manpower Administration Rev. Sept. 1974.

CONCLUSION

On the basis of the foregoing arguments, it is respectfully requested that the decision of the District Court be reversed.

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